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Snehal Shah
B.Com., FCS, LL.B.
+91 9821 778811

Snehal Shah & Associates
COMPANY SECRETARIES

501, Shreeji Arcade Premises, Jn. of S. V. Road & M. G. Road, Kandivali (West), Mumbai 400067
Office No. : + 91 97693 51780 | Email: snehalshah_19@yahoo.com | snehalshahpcs@gmail.com

Some important changes happened in the Corporate and Legal world in the month of July, 2020:

1. Extension of the last date of filing of Form NFRA-2

- The National Financial Reporting Authority (NFRA) is separate and independent body constituted under the provisions of Section 132 of the Companies Act, 2013 with effect from 1st October 2018 by Government of India to provide for matters relating to accounting and auditing standards under this Act and improving investor and public confidence in the financial reporting of an entity.

- Form NFRA- 2 is an Annual Return to be filed by auditors with National Financial Reporting Authority.

- Ministry of Corporate Affairs in continuation of General Circular No. 19/2020 dated 30th April, 2020 has further decided to extend the time limit for filing Form NFRA- 2 for the reporting period financial year 2018-2019 from 210 days to 270 days from the date of deployment of this form on the website of National Financial Reporting Authority (NFRA).

  Impact: Time limit for filing Form NFRA-2 for Financial Year 2018-2019 has been extended for 270 days.

2. Deployment of Form PAS-6 (Reconciliation of Share Capital Audit Report)

- As per circular dated 22nd May, 2019 every Unlisted Public Company governed under the rule 9A of Companies (Prospectus and Allotment of Securities) Rule, 2019 is required to file Form PAS-6 with Registrar along with such fees as provided in Companies (Registration Office and Fees) Rules, 2014 within 60 days of deployment of form on MCA website and thereafter within 60 days from conclusion of half year ended (31st March and 30th September respectively). The said circular came into effect from 30th September, 2019.

- PAS-6 is Reconciliation of Share Capital Audit Report which needs to be filed on half yearly basis by every Unlisted Public Companies having its shares in dematerialized form.

- This rule is not applicable to Government Company, Nidhi Company and Wholly Owned Subsidiary Company.

- ISIN (International Security Identification Number) is mandatory for filing form PAS-6. If company has different ISIN then PAS-6 must be filed for each ISIN separately. Also mandatory attachments are not required for filing PAS-6.

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- The due date for Financial Year 2019-2020, for both the half-year ended on 30th September 2019 and 31st March 2020 shall be 30th September 2020 since the form has been deployed on 15th July, 2020 on MCA Website.
  Note: Since the form PAS-6 was deployed on 15th July, 2020 the due date for half-year ended on 30th September, 2019 shall be 60 days from 15th July, 2020 i.e. 13th September, 2020.
  Additionally, as a measure of COVID-19 relief, the MCA, vide General Circular No. 11/2020 dated 24th March 2020, has announced that no additional fees shall be charged for any late filing during the moratorium period from 1st April 2020 to 30th September 2020.
  Concluding thereby, the due date for filing Form PAS-6 for both the half-year ending 30th September 2019 and 31st March 2020 shall be 30th September 2020.

- The due date for Financial Year 2020-2021 for half-year ended on 30th September, 2020 and 31st March, 2021 shall be 60 days from conclusion of half year ended i.e. 29th November, 2020 and 30th May, 2021 respectively.

Impact: PAS-6 has been deployed in order to file half yearly Reconciliation of Share Capital Report by every Unlisted Public Company to show the number of shares held in dematerialized form and also show the difference between number of shares issued and total number at the end of the half year ended, if any.

3. Case Study under Companies Act, 2013

- National Company Law Tribunal (NCLT), Mumbai Branch in matter of Netscout Systems Industrial Private Limited (the Applicant/ Defaulting Company) had violated Section 96 of Companies Act, 2013 for which an application for compounding of offence was made under section 441 of Companies Act, 2013 before ROC and same had been forwarded to NCLT along with ROC report.

- In the given case the applicant company had failed to comply with provisions of Section 96 of Companies Act, 2013 i.e. failed to conduct Annual General Meeting (AGM) within prescribed time.
  Note: Section 96 of Companies Act, 2013 stated that the company shall hold first AGM within 9 months from the closing of financial year and in other cases meeting shall be held within 6 months from the closing of the financial year. It also states that for any special reason other than first AGM can be extended by a period not exceeding 3 months.

- The legal representative of applicant company submitted before the NCLT that the company held Annual General Meeting (AGM) for Financial year 2013-2014 on 30th September, 2014 and for Financial Year 2014-2015 the meeting could not be held as per the due date (i.e. 30th September, 2015) as one of the two additional Directors was outside India due to which Board Meeting could not be held for approval of accounts

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and sending out notices for AGM and the same business cannot be transacted through video conferencing and other audio visual means.

- The said default made by the company and its directors was not intentional/deliberate and not to prejudice the interest of the members, creditors or other parties.

- The company then held an adjourned AGM where the accounts were adopted on 29th January, 2016 instead of 30th September, 2015 resulting in delay of 121 days which is beyond the prescribed limit of 3 months which resulted into violation of Section 96 of Companies Act, 2013.

- Since the offence was not deliberate and the same was made good by conducting belated meeting, the applicant company was allowed the said compounding application with minimum compounding fees payable.

- On violation of provisions of Section 96 of the Act, punishment is provided under section 99 of the Act which states that the company and every officer in default shall be punish with a fine which may extent upto Rs. 1,00,000/- and in case of continuing default with further fine of Rs. 5,000/- every day during which default continues.

- Thus the compounding fees of Rs. 1,00,000/- was imposed on the company and Rs. 50,000/- each on the 2 directors of the company (i.e. Rs. 2,00,000/- in total) for not repeating the impugned default in future.

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We suggest readers to draw their conclusions after taking into consideration various other relevant sections, rules to be notified from time to time and applicable Secretarial Standards, Accounting Standards and Guidance notes and other notifications, circulars and amendments notified from time to time.

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